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Testimony from:
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In OPPOSITION to House File 1184

House Commerce Finance and Policy Committee

March 16, 2022

Chairman Stephenson, Vice Chair Kotyza-Witthuhn and members of the House Commerce Finance and Policy Committee,

My name is Alan Smith, and I am the Midwest director at the R Street Institute, which is a nonprofit, nonpartisan, public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government in many areas. We are also a think tank that is devoted to pragmatic, free-market solutions to public policy challenges, and that has engaged on technology issues since our founding 10 years ago.

With the pandemic creating a huge reliance on online interactions, there has been increased focus on the effect of "big tech" in our everyday lives. While there are lots of questions arising about adjustments to a civil society and/or the commercial world we can regulate, not many of them rise to the level of needing additional laws.

We think HF 1184 is wrong on every level of what useful legislation is designed to provide.[1] It speaks to an emotional, not a commercial problem. It allows multiple unintended consequences. It seeks to benefit billionaires at the expense of the little guy who has a good idea.[2] In derogation of the property rights that distinguish a modern civilization, it trashes literally millions of existing contracts, the foundation of commerce in this nation. It completely exempts particular wealthy software developers. Only the Apple and Google stores are targeted, but those including Sony, Samsung, Amazon, Aptoide and F-Droid do not fit the definition of $10 million/year revenues from Minnesota residents. One knowledgeable state senator told us that he was embarrassed that this bill got as far as it did in his state.

This legislation has been developed by software developers who are not good candidates for any kind of bailout by the legislature. They just do not want to pay the fees for the overhead that international platforms like Apple and Google invest in making their software secure and available in 175 countries.[3]

They can currently market their entertainment and computer match-making software over the internet outside of the popular app stores.

The commission that the volume users pay now in part inures to the benefit of small developers, who have formed a coalition to resist this legislation. The mid-level and small developer coalition has a letter that has been distributed to committee members, so I will not elaborate here except to point out that the letter is signed by, among others, the American Consumer Institute, Independent Women's Forum, Hispanic Leadership Fund, Center for Freedom & Prosperity, National Taxpayer's Union, Competitive Enterprise Institute, NetChoice, Information Technology & Innovation Foundation, Americans for Prosperity, Taxpayers Protection Alliance, Innovation Economy Institute and the Chamber of Progress.[4]

Minnesota's proposed law also allows any app developer to collect payments from its own system to avoid the commission currently paid to the host store. When downloading from the Apple store, for instance, a customer has the advantage of knowing that Apple and Google Play check every application that they offer for download against malicious software and security.[5] Mandating that the digital distribution platforms accept "side-loaded" apps from other sources decreases security, threatens privacy and is, in that sense, anti-consumer.

As seen from the list above, many organizations specifically built to analyze and shape public policy from different perspectives have weighed in against the idea that large successful platforms like Apple and Google must take all comers and further subsidize their distribution. This legislation has many features of laws that give government-managed economies a sour taste for many of their citizens. A good question to be asked is: "Why should the legislature be engaged here?" We urge the committee to reject HF 1184.

Respectfully submitted,

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[1] HF 1184, "A bill for an act relating to commerce; prohibiting app stores from requiring developers to use a specific app store or in-app payment system," 92nd Legislature. https://www.revisor.mn.gov/bills/text.php?session=ls92&number=HF1184&session_number=0&session_year=2021&version=list.
[2] Morgan Reed, "HB2005 would benefit billionaires at expense of Arizona developers," *Arizona Capitol Times*, March 3, 2021. https://azcapitoltimes.com/news/2021/03/03/hb2005-would-benefit-billionaires-at-expense-of-arizona-developers.
[3] "Apple Services now available in more countries around the world," Apple, April 21, 2020. https://www.apple.com/newsroom/2020/04/apple-services-now-available-in-more-countries-around-the-world.

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[4] Josh Withrow and Wayne Brough, "R Street Institute leads coalition in opposition to app store regulation," R Street Institute, March 7, 2022. https://www.rstreet.org/2022/03/07/r-street-institute-leads-coalition-in-opposition-to-app-store-regulation.

[5] "Building a Trusted Ecosystem for Millions of Apps: A threat analysis of side-loading," Apple, October 2021. https://www.apple.com/privacy/docs/Building_a_Trusted_Ecosystem_for_Millions_of_Apps_A_Threat_Analysis_of_Sideloading.pdf.